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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/675,229

09/29/2003

Takako Fujii

B-5248 621294-8

9863

36716

7590

06/06/2007

LADAS & PARRY

5670 WILSHIRE BOULEVARD, SUITE 2100

LOS ANGELES, CA 90036-5679

EXAMINER

HILL, LAURA C

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

06/06/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**UNITED STATES DEPARTMENT OF COMMERCE****U.S. Patent and Trademark Office**

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118

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10675229	9/29/2003	FUJII ET AL.	B-5248 621294-8

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EXAMINER

Laura C. Hill

ART UNIT**PAPER**

3761

20070530a

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Office Action Summary	Application No. 10/675,229	Applicant(s) FUJII ET AL.	
	Examiner Laura C. Hill	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-7,11 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-7,11 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 26 March 2007 have been fully considered but they are not persuasive.

In response to Applicant's arguments that Wehrmeyer doesn't disclose a lower indented layer (see Remarks pages 7-9), Examiner maintains that since Wehrmeyer discloses elements 46 which are linear regions of lower layer 26 that have U-shaped recesses (see all figures, especially figure 2 and column 6, lines 55-66), Wehrmeyer meets the claim limitations.

In response to Applicant's arguments that Wehrmeyer doesn't disclose the relative densities (see Remarks pages 9-10), Examiner maintains that Wehrmeyer meets the limitations since Wehrmeyer discloses the layers with relative densities as discussed below with respect to claim 1. When the reference discloses all the limitations of a claim except a property or function, and the examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof to applicant as in *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). See MPEP § 2112- 2112.02.

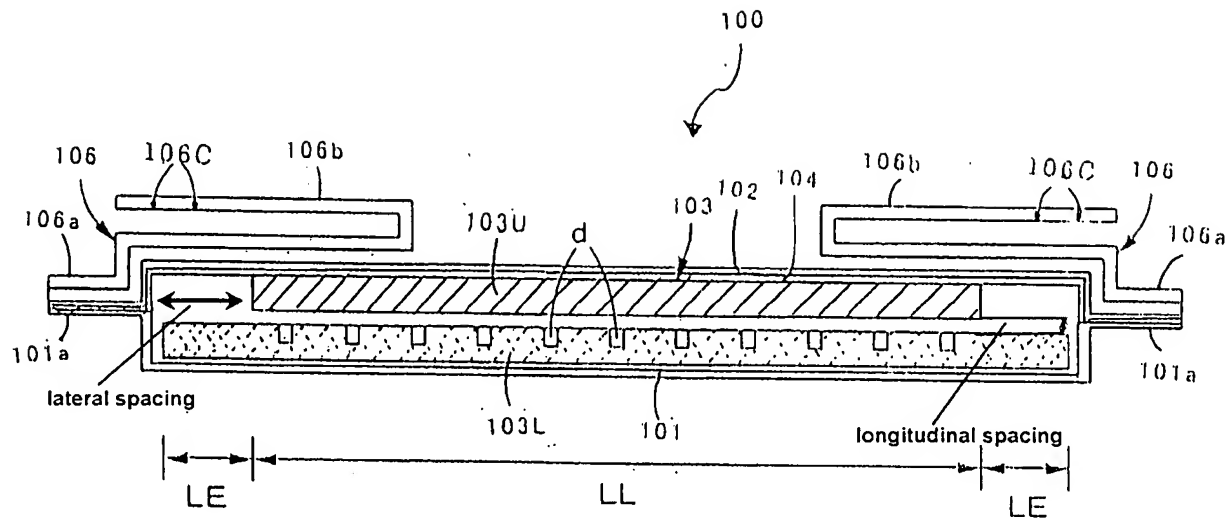
In response to Applicant's arguments that Wehrmeyer doesn't disclose a lower layer that extends beyond an outer edge of said upper layer as recited in Claim 1 (see Remarks pages 9-10), Examiner maintains that Wehrmeyer lower layer 26 has longitudinally and laterally boundaries that extend outside the longitudinal and lateral edges of upper layer 24 (figure 3).

Specification

The objection to the title has been removed in response to Applicant's amendments dated 26 March 2007. The **title has been changed** to: Absorbing Article Having Honeycomb Recesses on Lower Absorbent Layer and Varying Layer Densities.

Claim Language Interpretation

Applicant's remarks (see pages 6-7) with regards to the meaning of the phrase "extends beyond an outer edge" is considered but not found persuasive. Applicant admits via the attached Merriam-Webster Online Dictionary that the definition of "extend" includes "longer" as in definition 2a. Thus the interpretation previously held by the Examiner to include lower layer that extends in a longitudinal or lateral direction beyond a longitudinal or lateral outer edge of the upper layer (see pages 2-3 of the Office action dated 22 December 2006) is not improper and is maintained for examination purposes. For further clarification, examiner notes the lateral spacing and longitudinal spacing of Applicant's figure 2 with respect to the upper and lower layers to be extending longitudinally and laterally.



Claim Rejections - 35 USC § 112

The rejection of claims 15-16 under 35 USC 112, second paragraph have been rendered moot since the claims were cancelled on 26 March 2007.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 4-7, 11, and 17 rejected under 35 U.S.C. 103(a) as being unpatentable over Wehrmeyer et al. (US 3,908,659). Wehrmeyer discloses body fluid absorbent diaper 10 (column 3, lines 58-61) comprising absorbent pad 12/22 sandwiched between moisture pervious top sheet 14 and impervious barrier 16 (column 4, lines 4-15), wherein said absorbent pad includes upper tissue layer 24 and lower tissue layer 26/46 (column 5, lines 3-6, figures 2-3); wherein said lower layer 26 inherently has a higher density than upper layer 24 since it is embossed/recessed into a continuous honeycomb shape on the garment facing side of lower layer 26,46 (column 6, lines 55-66, figure 2);

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wherein the recesses have an emboss percentage of 12-50% (column 6, lines 15-23) for a desired balance of softness and absorbency (column 5, lines 20-22); wherein the lower layer 26 extends beyond an outer lateral edge of upper layer 24 (figures).

Wehrmeyer inherently has recess angle of inclination, upper layer density, and spacing distance values in the ranges claimed since where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a prima facie case of either anticipation or obviousness has been established. In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). Wehrmeyer further discloses recess are formed in the absorbent 22 (figures 2-3).

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wehrmeyer et al. (US 3,908,659) in view of Fitzgerald (US 4,435,178). Wehrmeyer does not expressly disclose the recesses are on the body side of the lower layer. Fitzgerald discloses absorbent sanitary napkin 10 having an absorbent core 12 disposed between body fluid permeable body-side top sheet 34 (column 3, lines 14-18) and water impervious material 26 which overlies back member 24 (column 3, lines 9-11) and is laid on top of the core (column 4, lines 4-6); wherein the absorbent core has upper layer 14 coextensive with lower layer 16 and having recesses 18 formed on the body-facing side to accommodate gushes of fluid and improve absorption of bodily fluids (column 3, lines 24-28, figure 1), compressed grooves/recesses 19 formed on the garment-facing side (column 2, lines 40-68, figure 1), wherein squeeze-out portions are formed on both sides of lower layer 16 in areas outside recesses 18 (figure 1), wherein

lower layer 16 inherently has higher density than upper layer 14 and a higher density than the squeeze-out portions lying outside recesses since the lower layer contains recesses 18, 19. Fitzgerald further discloses the recesses and compressed portions are desirable to easily receive and prevent gushes of waste fluid from gushing through the pad, and thus enhancing body fluid distribution (column 2, lines 11-16). One would be motivated to modify the honeycomb recesses with surface area percentages of Wehrmeyer with the body side lower layer recesses of Fitzgerald for improved fluid absorbency since the references both disclose multi-layered recessed absorbent cores for use in personal wearing articles. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the absorbent layer, thus providing a recessed body side lower layer.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (hours vary).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura C Hill
Examiner
Art Unit 3761

LCH



TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

